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August 7, 1953

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CONCORD, N.H.

Herbert W. Hill, Secretary
Fish and Game Commission
Concord, New Hampshire

Dear Mr. Hill:

In Mr. Wyman's absence I am replying to your letter of August 4, 1953 in which you inquire whether or not the salary of the Director of the Fish and Game Department may be increased from \$6500. to \$8500. without legislation. You have further asked that this situation be looked into and discussed with the Acting Chairman, Mr. Ransdell and yourself. You have also expressed the view that you think it is possible to increase the Director's salary to the figure of \$8500. recommended by the Fish and Game Commission, even though the Legislature chose to veto this view. Your view is apparently based in part upon your interpretation of a legal opinion rendered at the request of the Commission by Richard F. Upton, Esq. to Honorable Charles E. Smart, Chairman, Fish and Game Commission, Ossipee, New Hampshire.

In the absence of express enabling legislation, no state commission may employ outside counsel for a consideration to render legal opinions relative to the official conduct of their departments. If this office requires outside legal assistance, the Attorney General, with the approval of Governor and Council, may employ counsel. Their reasonable fees may then be paid on the warrant of the Governor out of any money in the treasury not otherwise appropriated. S. 11, c. 24, R. L. Accordingly, legal opinions rendered by private counsel to state agencies or departments do not afford a proper legal basis upon which to predicate a course of action in the conduct of the official duties of public officials, agencies, boards, or commissions.

In my opinion, the Fish and Game Commission is without power to increase the salary of the Director of the Fish and Game Department from \$6500. to \$8500. Chapter 265, Laws of 1953, establishes the minimum salary of the Director of the Fish and Game Department at \$6500. and his maximum salary, subject to provisions for yearly increments, at \$7475. The Legislature specifically considered whether or

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not any of the salaries in c. 265, Laws 1953 might be subjected to change by administrative ruling in providing that any additional funds which may become available to the Water Resources Board on account of additional projects may be used to increase the salary of the Chairman of said Board by such amount as may be determined by the Governor and Council. This is the sole exception to the salary range established for all state officials. The Legislature could not have more clearly expressed an intent to establish salaries at not less than the minimum nor more than the maximum prescribed in said c. 265, Laws 1953. Therefore, the salary scale established by this statute for the Director of the Fish and Game Department may not be controverted by the Fish and Game Commission.

As to the Commission's power to control the expenditure of its own funds, it is my opinion that your Commission is limited in its expenditures to the amounts and purposes specified in c. 174, Laws of 1953, with the proviso that if the Fish and Game Department shall receive for disbursement any unexpended balances from income of previous years, "said additional amounts . . . shall be expended under the direction of the fish and game commission, with the approval of the governor and council." This proviso, however, constitutes no authority for deviating from the salary prescribed by the Legislature for the Director of the Fish and Game Department. C. 265, Laws 1953.

If you desire a further conference in this matter, I shall be pleased to meet with you and the Acting Chairman, Mr. Ramsdell, at your convenience.

Very truly yours,

John N. Nassikas
Deputy Attorney General

JNN/d